

Chapter 173-425 WAC

((OPEN)) OUTDOOR BURNING

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-010 Purpose. ~~((This chapter promulgated under chapter 70.94 RCW, the Washington Clean Air Act, authorizes the department of ecology to implement the provisions of that act. This rule establishes controls for open burning in the state in order to:~~

~~(1) Reduce open burning to the greatest extent practical by eliminating it in:~~

~~(a) Areas that exceed ambient air quality standards for PM-10 and/or carbon monoxide; and~~

~~(b) Urban growth areas or cities with a population of 10,000 or more by December 31, 2000;~~

~~(2) For areas where open burning is allowed, establish a limited burning program, including procedures by which open burning may be conducted;~~

~~(3) Encourage the development and use of alternate methods of debris disposal.))~~ The purpose of this rule is to establish a program to implement the limited burning policy authorized by sections 743 through 765 of the Washington Clean Air Act (chapter 70.94 RCW) and other provisions of the act that pertain to outdoor burning (except any outdoor burning listed in WAC 173-425-020(1)). Statutory authority for particular provisions of the rule is shown in parentheses throughout the rule.

The limited burning policy requires ecology and other agencies to:

(1) Reduce outdoor burning to the greatest extent practical, especially by prohibiting it in certain circumstances; (RCW 70.94.743(1))

(2) Establish a permit program for limited burning, one that requires permits for most types of outdoor burning; and (RCW 70.94.745)

(3) Foster and encourage development of reasonable alternatives to burning. (RCW 70.94.745(6))

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-020 Applicability. ~~((1) No outdoor burning shall occur during a declared period of impaired air quality.~~

~~(2) Except as described in subsection (1) of this section and WAC 173-425-050, this chapter applies to all forms of outdoor burning in the state except:~~

~~(a) Silvicultural burning (governed by chapter 332-24 WAC).~~

~~(b) Agricultural burning (governed by chapter 173-430 WAC).~~

~~(c) Recreational fires as defined in WAC 173-425-030(12).~~

~~(d) Ceremonial fires as defined in WAC 173-425-030(2).~~

~~(e) Burning to improve and maintain fire dependent ecosystems (pursuant to chapter 332-24 WAC).~~

~~(3) A local air authority, fire protection authority, county, or conservation district may enforce its own controls that are stricter than those set forth in this chapter.)~~ (1) This chapter applies to all outdoor burning in the state except:

(a) Agricultural burning (which is governed by chapter 173-430 WAC);

(b) Silvicultural burning (which is governed by chapter 332-24 WAC, the Washington state smoke management plan, and various laws including chapter 70.94 RCW); and

(c) Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreement).

(2) Specifically, this chapter applies to:

(a) Residential burning. (RCW 70.94.745)

(b) Land clearing burning. (RCW 70.94.745)

(c) Storm or flood debris burning. (RCW 70.94.743)

(d) Tumbleweed burning. (RCW 70.94.745)

(e) Weed abatement fires. (RCW 70.94.650)

(f) Fire fighting instruction fires. (RCW 70.94.650)

(g) Rare and endangered plant regeneration fires. (RCW 70.94.651)

(h) Indian ceremonial fires. (RCW 70.94.651)

(i) Recreational fires. (RCW 70.94.765)

(j) Other outdoor burning. (RCW 70.94.765)

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-030 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings:

~~(1) ((Agricultural burning" means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.~~

~~(2) "Ceremonial fire" means a fire associated with a Native American ceremony or ritual.~~

~~(3) "Department"))~~ "Agricultural burning" means outdoor burning regulated under chapter 173-430 WAC, including, but not limited to, any incidental agricultural burning or agricultural burning for pest or disease control.

(2) "Air pollution episode" means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chapter 173-435 WAC.

(3) "Construction/demolition debris" means all material resulting from the construction, renovation, or demolition of buildings, roads, and other man-made structures.

(4) "Ecology" means the Washington state department of ecology.

~~((4) "Episode" means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chapter 173-435 WAC.~~

~~(5) "Impaired air quality" means a condition declared by the department or a local air authority in accordance with the following criteria:~~

~~(a) Meteorological conditions are conducive to an accumulation of air contamination concurrent with:~~

~~(i) Particulate that is ten micron and smaller in diameter (PM-10) at or above an ambient level of seventy-five micrograms per cubic meter measured on a twenty-four hour average; or~~

~~(ii) Carbon monoxide at an ambient level of eight parts of contaminant per million parts of air by volume (ppm) measured on an eight-hour average.~~

~~(b) Air quality that threatens to exceed other limits established by the department or a local air authority.~~

~~(6))~~ (5) "Fire fighting instruction fires" means fires for instruction in methods of fire fighting, including, but not limited to, training to fight structural fires, aircraft crash rescue fires, and forest fires.

(6) "Firewood" means bare untreated wood used as fuel in a solid fuel burning device, Indian ceremonial fire, or recreational fire.

(7) "Impaired air quality" means a first or second stage impaired air quality condition declared by ecology or a local air authority in accordance with WAC 173-433-140.

(8) "Indian ceremonial fires" means fires necessary for Native American ceremonies (i.e., conducted by and for Native Americans) if part of a religious ritual.

(9) "Land clearing burning" means outdoor burning of trees, stumps, shrubbery, or other natural vegetation from land clearing

projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused). (RCW 70.94.750(2))

(10) "Local air authority" means an air pollution control authority activated ((pursuant to)) under chapter 70.94 RCW that has jurisdiction over the subject source.

~~((7) "Nonattainment area" means a clearly delineated geographic area which has been designated by the Environmental Protection Agency and promulgated as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants, which includes carbon monoxide, fine particulate matter (PM 10), sulfur dioxide, ozone, and nitrogen dioxide.~~

~~(8) "Nuisance" means an emission of smoke or other emissions from any open fire that unreasonably interferes with the use and enjoyment of the property deposited on.~~

~~(9) "Open burning" means all forms of outdoor burning except those listed as exempt in WAC 173-425-020.~~

~~((10)) (11) "Natural vegetation" means unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood.~~

(12) "Nonattainment area" means a clearly delineated geographic area which has been designated by the Environmental Protection Agency because it does not meet (or it contributes to ambient air quality in a nearby area that does not meet) a national ambient air quality standard or standards for one or more of the criteria pollutants, which include carbon monoxide, particulate matter (PM-10 and PM2.5), sulfur dioxide, nitrogen dioxide, lead, and ozone.

(13) "Nonurban areas" means unincorporated areas within a county that are not designated as an urban growth area. (RCW 70.94.745(8))

(14) "Nuisance" means an emission of smoke or any other air contaminant that unreasonably interferes with the use and enjoyment of the property upon which it is deposited. (RCW 70.94.030(2))

(15) "Other outdoor burning" means any type of outdoor burning not specified in WAC 173-425-020 (1) or (2)(a) through (i), including, but not limited to, any outdoor burning necessary to protect public health and safety. (RCW 70.94.650(7) and 70.94.765)

(16) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. For the purposes of this rule, "outdoor burning" means all types of outdoor burning except agricultural burning and silvicultural burning. (RCW 70.94.743(2))

~~((11) "Reasonable alternatives" means disposal alternatives to open burning that cost less than eight dollars fifty cents per cubic yard. After July 1993, this amount shall be adjusted periodically by department policy.~~

~~(12) "Recreational fire" means barbecues and campfires, using charcoal, natural gas, propane, or natural wood which occur in~~

~~designated areas or on private property. Fires used for debris disposal purposes are not considered recreational fires.~~

~~(13) "Silvicultural burning" means burning on any land the department of natural resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.~~

~~(14) "Urban growth area" means an area defined by RCW 36.70A.030.))~~ (17) **"Permitting agency"** means the agency responsible for issuing permits (including adopting a general permit) for, and/or enforcing all requirements of this chapter that apply to, a particular type of burning in a given area (unless another agency agrees to be responsible for certain enforcement activities in accordance with WAC 173-425-060 (1)(a) and (6)).

(18) **"Pollutants emitted by outdoor burning"** means carbon monoxide, carbon dioxide, particulate matter, sulfur dioxide, nitrogen oxides, lead, and various volatile organic compounds and toxic substances.

(19) **"Rare and endangered plant regeneration fires"** means fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in chapter 79.70 RCW.

(20) **"Reasonable alternative"** means a method for disposing of organic refuse (such as natural vegetation) that is available, reasonably economical, and less harmful to the environment than burning.

(21) **"Recreational fire"** means cooking fires, campfires, and bonfires using charcoal or firewood that occur in designated areas or on private property for cooking, pleasure, or ceremonial purposes. Fires used for debris disposal purposes are not considered recreational fires.

(22) **"Residential burning"** means the outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee. (RCW 70.94.750(1))

(23) **"Silvicultural burning"** means outdoor burning relating to the following activities for the protection of life or property and/or the public health, safety, and welfare:

(a) Abating a forest fire hazard;

(b) Prevention of a forest fire hazard;

(c) Instruction of public officials in methods of forest fire fighting;

(d) Any silvicultural operation to improve the forest lands of the state; and

(e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. (RCW 70.94.660(1))

(24) **"Storm or flood debris burning"** means fires consisting of natural vegetation deposited on lands by storms or floods that have

occurred in the previous two years and resulted in an emergency being declared or proclaimed in the area by the city, county, or state government and burned on such lands by the property owner or his or her designee. (RCW 70.94.743 (1)(c))

(25) "Tumbleweed burning" means outdoor burning to dispose of dry plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off, and rolled about, by the wind.

(26) "Urban growth area" means land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030.

(27) "Weed abatement fires" means any outdoor burning to dispose of weeds that is not regulated under chapter 173-430 WAC, which applies to agricultural burning.

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-040 ((Prohibited materials.)) **Areas where certain types of outdoor burning are prohibited.** ((1) Except as provided in WAC 173 425 020(2), the following materials shall not be burned in any outdoor fire: Garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction debris, metal or any substance (other than natural vegetation) which when burned releases toxic emissions, dense smoke, or odors.

(2) Prohibited materials may be burned in certain circumstances:

(a) Diseased animals and infested material. When ordered by a duly authorized health officer and authorized by the department or local air authority, diseased animals and other infested material may be burned, as required, to keep the infestation from spreading.

(b) Dangerous material. When ordered by a fire protection authority and when authorized by the department or local air authority, fires to dispose of materials presenting a danger to life, property, or public welfare may be burned, if no approved practical alternate method of disposal is available.)) (1)

Nonattainment areas. Residential burning and land clearing burning may not be allowed in any areas of the state that exceed federal or state ambient air quality standards for pollutants emitted by outdoor burning. These areas are limited to all nonattainment areas and former nonattainment areas for carbon monoxide, particulate matter (PM-10 and PM2.5), sulfur dioxide, nitrogen dioxide, and lead. However, ecology may, in cooperation with any local air authority having jurisdiction, authorize the omission of parts of a nonattainment area if ambient air quality standards for the pollutants that caused the area to be designated nonattainment have

not been exceeded in those parts, and outdoor burning in those parts has not contributed, and is not expected to contribute, significantly to exceedances of the standards in the nonattainment area. (RCW 70.94.743 (1)(a))

(2) **Urban growth areas.** Residential burning and land clearing burning may not be allowed in any urban growth areas after December 31, 2000, except as follows: Residential burning and land clearing burning may be allowed in the following types of urban growth areas until December 31, 2006: (RCW 70.94.743 (1)(b))

(a) Urban growth areas for incorporated cities having a population of less than five thousand people that are neither within nor contiguous with any area identified in subsection (1) of this section; and

(b) Urban growth areas that do not include an incorporated city.

(3) **Cities over 10,000.** Residential burning and land clearing burning may not be allowed in any cities having a population greater than ten thousand people after December 31, 2000. Cities having this population must be identified by using the most current population estimates available for each city. (RCW 70.94.743 (1)(b))

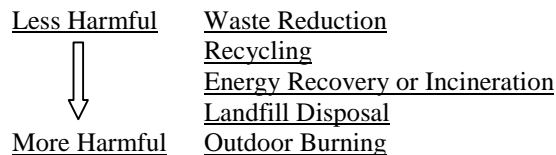
(4) **High density areas.** Land clearing burning may not be allowed in any area having a general population density of one thousand or more persons per square mile after December 31, 2000, if the area is contiguous with any area where land clearing burning has already been, or must be, prohibited by that date under subsection (1), (2), or (3) of this section, and it may not be allowed in any other areas having this density after December 31, 2006. All areas having this density must be identified by using the most current population data available for each census block group and dividing by the land area of the block group in square miles. (RCW 70.94.750(2))

(5) **Areas with a reasonable alternative to burning.** Residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires, and other outdoor burning of organic refuse may not be allowed in any area of the state (including any areas or parts of areas identified in subsections (1) through (4) of this section) when a reasonable alternative to burning is found to exist in the area for that type of burning. (RCW 70.94.745(6))

By December 31, 2000, and at least every third year after that, each local air authority, and ecology in cooperation with counties, must determine whether any areas within their jurisdiction where a type of burning listed in this subsection is allowed (except other outdoor burning of organic refuse) have a reasonable alternative to burning. Determinations for other outdoor burning of organic refuse must be made on a permit-by-permit basis by applying the criteria in (a) and (b) of this subsection. A reasonable alternative exists for any area where the answers to both of the following questions are "Yes" for the specified type of burning: Provided, That parts of an

area may be excluded for the purpose of defining practical boundaries for the area.

	<u>Yes</u>	<u>No</u>
<u>(a) Available and reasonably economical. Is the area served by:</u>		
<u>(i) A county or municipally-sponsored service for recycling (i.e. composting) of the organic refuse (e.g. natural vegetation); or</u>		
<u>(ii) Any other method for disposing of the organic refuse (such as a public or private chipping or chipper rental service, an energy recovery or incineration facility, or a solid waste drop box, transfer station, or landfill) that is located within a reasonable distance and will accept the type and volume of organic refuse at a cost that is less than or equivalent to the median of all county tipping fees in the state for disposal of municipal solid waste?</u>	<input type="checkbox"/>	<input type="checkbox"/>
<u>(b) Less harmful to the environment. Is any available and reasonably economical alternative method for disposing of the organic refuse less harmful to the environment than outdoor burning according to the following hierarchy?:</u>	<input type="checkbox"/>	<input type="checkbox"/>



AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-050 ((~~Curtailment during episodes or impaired air quality.~~) Other prohibitions/requirements that apply to all outdoor burning. ((~~(1) No outdoor fire shall be ignited:~~

~~(a) Whenever the department declares an air pollution episode for the geographical area pursuant to chapter 173-435 WAC; or~~

~~(b) Whenever the department or a local air authority declares impaired air quality for the geographical area.~~

~~(2) A person responsible for an outdoor fire at the time an episode or impaired air quality is declared shall extinguish that fire. Outdoor burning conducted under the auspices of the department of natural resources for the purpose of burning forest slash pursuant to RCW 70.94.660 through 70.94.670 shall be extinguished by withholding new fuel and allowing the fire to burn down.~~

~~(3) Smoke visible from all types of outdoor burning, except silvicultural burning, after a time period of three hours has elapsed from the time of declaration of the episode or impaired air quality shall constitute prima facie evidence of unlawful outdoor burning.~~

~~(4) For department of natural resource silvicultural burning, smoke visible from outdoor burning after a time period of ten hours has elapsed from the time of declaration of the episode or impaired~~

~~air quality shall constitute prima facie evidence of unlawful outdoor burning.))~~ No person may cause or allow an outdoor fire in an area where the type of burning involved is prohibited under WAC 173-425-040, or where it requires a permit under WAC 173-425-060(2), unless a permit has been issued and is in effect. In addition, the following general requirements apply to all outdoor burning regulated by this chapter, including any outdoor burning allowed without a permit under WAC 173-425-060(2), unless a specific exception is stated in this section:

(1) **Prohibited materials.** The following materials may not be burned in any outdoor fire: Garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal, or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned, except that: (RCW 70.94.775(1) and Attorney General Opinion 1993 #17)

(a) Fire fighting instruction fires for aircraft crash rescue training fires approved and conducted in compliance with RCW 70.94.650(5) may contain uncontaminated petroleum products. (RCW 70.94.650(6))

(b) Ecology or a local air authority may allow the limited burning of prohibited materials for other fire fighting instruction fires, including those that are exempt from permits under WAC 173-425-060 (2)(f), and other outdoor burning necessary to protect public health and safety. (RCW 70.94.650(7))

(2) **Hauled material.** No outdoor fire may contain material (other than firewood) that has been hauled from an area where outdoor burning of the material is prohibited under WAC 173-425-040. Any outdoor burning of material hauled from areas where outdoor burning of the material is allowed requires an appropriate permit under WAC 173-425-060(2), and any use of property for this purpose on an on-going basis, must be limited to the types of burning listed in WAC 173-351-200 (5)(b) (criteria for municipal solid waste landfills) and approved in accordance with other laws, including chapter 173-304 WAC (Minimum functional standards for solid waste handling) and chapter 173-400 WAC (General regulations for air pollution sources). (RCW 70.94.745(6))

(3) **Curtailments.**

(a) No outdoor fire may be ignited in a geographical area where:

(i) Ecology has declared an air pollution episode; (RCW 70.94.775(2) and 70.94.780)

(ii) Ecology or a local air authority has declared impaired air quality; or (RCW 70.94.775(2) and 70.94.780)

(iii) The appropriate fire protection authority has declared a fire danger burn ban, unless that authority grants an exception.

(b) The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day.

(c) The person responsible for an outdoor fire must extinguish the fire when an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared. In this regard:

(i) Smoke visible from all types of outdoor burning, except land clearing burning, after a time period of three hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

(ii) Smoke visible from land clearing burning after a time period of eight hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

(4) **Unlawful outdoor burning:** It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance. (RCW 70.94.040, 70.94.650(1), and 70.94.780)

(a) Any person affected by outdoor burning may file a complaint with the permitting agency or other designated enforcing agency.

(b) Any agency responding to an outdoor burning complaint should attempt to determine if the burning on any particular property is unlawful. This may include, but is not limited to, considering whether the burning has caused an emission of smoke or any other air contaminant in sufficient quantity to be unlawful.

(c) Any person responsible for such unlawful outdoor burning must immediately extinguish the fire.

(5) **Burning in outdoor containers.** Outdoor containers (such as burn barrels and other incinerators not regulated under WAC 173-400-070(1)) used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than one-half inch, and they may only be used in compliance with this chapter.

(6) **Other general requirements:**

(a) A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it.

(b) No fires are to be within fifty feet of structures.

(c) Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-060 ((Open burning program for the state.))
Outdoor burning permit program/requirements. ((1) General requirements:

(a) All burning requires a permit as covered in WAC 173-425-070.

(b) Permits shall not be issued, and thus open burning is not allowed, in areas where reasonable alternatives are available. Within ninety days of the effective date, the department shall develop uniform procedures for determining costs of alternatives to open burning.

(c) A fire protection authority may declare a fire hazard in areas where burning is banned and in areas where burning is allowed. If open burning is determined the most appropriate manner to abate the fire hazard, the request must be reviewed and permitted by the local air authority. Permits issued under this section shall provide that:

(i) Prohibited material shall not be burned in any fire;

(ii) No open burning shall be done during a declared period of impaired air quality;

(iii) No reasonable alternative is available.

(d) No open burning shall be allowed in areas that exceed federal or state ambient air quality standards. Such areas shall be defined as carbon monoxide and/or PM-10 nonattainment area, unless otherwise determined pursuant to subsection (2)(a) of this section.

(2) Additional requirements for nonattainment areas.

(a) Phase-out approach. A local air authority may petition the department to use a phase-out approach in portions of a federally designated nonattainment area for carbon monoxide and/or PM-10. The phase-out approach will focus on how to achieve the Washington Clean Air Act goals and eliminate burning in areas that exceed the standards. The department will review and determine if the petition should be approved. The department may partially approve petitions or approve petitions with conditions based on consideration of the following factors:

(i) Population and population density.

(ii) The ability of the air quality in the region to support open burning based upon geographical and meteorological conditions.

(iii) The presence of a permitting program.

(iv) The extent to which reasonable alternatives to open burning are being developed through solid waste management plans and the schedule for the availability of such reasonable alternatives.

(v) Other factors deemed appropriate by the local air authorities.

(b) Petition evaluation. The petition to use a phase-out approach is due to the department no later than one month after the effective date of this rule. A ban is not effective in areas identified in the petition until after the department makes a ruling

~~on the petition. Upon receiving the petition, the department shall review and make a determination within thirty days. For all federally designated nonattainment areas, open burning shall be banned by the applicable attainment date.~~

~~(c) Permits. The department or local air authority may issue permits in banned areas for the following activities:~~

~~(i) Fire fighting instruction. Local air authorities or the department may issue permits for fire training fires, pursuant to guidelines and rules of the department of ecology.~~

~~(ii) Specific forms. The department or the local air authorities may permit, with conditions, fires set that are part of a defined research project, weed abatement, and smoke training as part of a military training exercise.~~

~~(d) Responding to open burning calls. Each affected county shall identify a fire marshal or other appropriate county official for field response and to document open burning complaints or violations using appropriate field notices. In areas where the county has no jurisdiction, the department or the local air authorities will negotiate with the appropriate local agency on field response.~~

~~(3) Additional requirements for urban growth areas and cities with a population of ten thousand or more.~~

~~(a) Open burning will be banned when reasonable alternatives are available, no later than the end of the year 2,000.~~

~~(b) Until open burning is banned, it is allowed subject to the permitting provisions of this chapter.~~

~~(c) When open burning is banned, the provisions in subsection (2) of this section apply.))~~ **(1) Permit program.**

(a) Ecology or local air authorities may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning in an area of the state. Ecology or local air authorities may enter into agreements with any capable agencies to identify the permitting agencies and enforcing agencies for each type of burning and determine the type of permit appropriate for each area where a permit is required. (RCW 70.94.654)

(b) Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule, for any type of burning that requires a permit: Provided, That a written permit should be used, where feasible, for land clearing burning, storm or flood debris burning in areas where residential burning and land clearing burning are prohibited under WAC 173-425-040 (1), (2), or (3), and other outdoor burning (except any other outdoor burning necessary to protect public health and safety). (RCW 70.94.745(4))

(c) The rule for a general permit must establish periods of time when any burning under the permit must occur. General permits must also include all appropriate conditions for burning as stated in subsection (4) of this section.

(2) **Types of burning that require a permit.** Except as otherwise stated, a permit is required for the following types of outdoor burning in all areas of the state under the jurisdiction of this chapter:

(a) Residential burning (except in the nonurban areas of any county with an unincorporated population of less than fifty thousand; (RCW 70.94.745(2))

(b) Land clearing burning; (RCW 70.94.745(2))

(c) Storm or flood debris burning; (RCW 70.94.743 (1)(c))

(d) Tumbleweed burning (except in counties with a population of less than two hundred fifty thousand); (RCW 70.94.745(5))

(e) Weed abatement fires; (RCW 70.94.650 (1)(a))

(f) Fire fighting instruction fires for training to fight structural fires in urban growth areas and cities with a population over ten thousand, and all other fire fighting instruction fires, except fire fighting instruction fires for training to fight structural fires as provided in RCW 52.12.150, aircraft crash rescue fires as provided in RCW 70.94.650(5), and forest fires; (RCW 70.94.650 (1)(b))

(g) Rare and endangered plant regeneration fires; (RCW 70.94.651(1))

(h) Indian ceremonial fires (except on lands within the exterior boundaries of Indian reservations unless provided for by intergovernmental agreement); (RCW 70.94.651(2))

(i) Recreational fires with a total fuel area that is greater than three feet in diameter and/or two feet in height (except in the nonurban areas of counties with an unincorporated population of less than fifty thousand; and (RCW 70.94.765)

(j) Other outdoor burning (if specifically authorized by the local air authority or ecology). (RCW 70.94.765)

(3) **Fees.** Permitting agencies may charge a fee for any permit issued under the authority of this chapter: Provided, That a fee must be charged for all permits issued for weed abatement fires and fire fighting instruction fires. All fees must be set by rule and must not exceed the level necessary to recover the costs of administering and enforcing the permit program. (RCW 70.94.650(2) and 70.94.780)

(4) **Permit decisions.** Permitting agencies must approve with conditions, or deny outdoor burning permits as needed to achieve compliance with this chapter. All permits must include conditions to satisfy the requirements in WAC 173-425-050, and they may require other conditions, such as restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions. Permitting agencies may also include conditions to comply with other laws pertaining to outdoor burning. (RCW 70.94.745, 70.94.750, and 70.94.780)

(5) **Establishment of a general permit and requirements for residential burning.**

(a) A general permit for residential burning is hereby adopted for use in any area where ecology (or a local air authority that has adopted this general permit by reference) and any designated enforcing agencies have agreed that a general permit is appropriate for residential burning, and have notified the public where the permit applies. All burning under this permit must comply with the conditions in (c) of this subsection, and it must be restricted to the first and second weekends (Saturday and Sunday) in April and the third and fourth weekends in October, unless alternative days are substituted by the enforcing agency and adequate notice of the substitution is provided to the public. Alternative days may only be substituted if conditions on the prescribed days are unsuitable due to such things as poor air quality, high fire danger, unfavorable meteorology, likely interference with a major community event, or difficulties for enforcement. (RCW 70.94.745(4))

(b) Local air authorities may also adopt a general permit for residential burning that prescribes a different set of days, not to exceed eight days per year, when any burning under the permit must occur: Provided, That the public must be given adequate notice regarding where and when the permit will apply. (RCW 70.94.745(4))

(c) The following conditions apply to all residential burning allowed without a permit under WAC 173-425-060 (2)(a) or allowed under a general, verbal, or electronic permit:

(i) The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day.

(ii) A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area.

(iii) The fire must not include garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal, or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned.

(iv) The fire must not include materials hauled from another property.

(v) If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately.

(vi) A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it.

(vii) No fires are to be within fifty feet of structures.

(viii) Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

(ix) Any burn pile must not be larger than four feet by four feet by three feet.

(x) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(xi) If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than one-half inch.

(xii) No fire is permitted within five hundred feet of forest slash.

Persons not able to meet these requirements or the requirements in WAC 173-425-050 must apply for and receive a written permit before burning. Failure to comply with all requirements of this subsection voids any applicable permit, and the person responsible for burning may be subject to enforcement action under subsection (6) of this section.

(6) **Field response and enforcement.** Any agency that issues permits, or adopts a general permit for any type of burning in an area, is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements of this chapter related to that type of burning in the area, unless another agency has agreed under WAC 173-425-060 (1)(a) to be responsible for certain field response or enforcement activities. Except for enforcing WAC 173-425-050 (3)(a)(iii), local air authorities and ecology may also perform these activities. Local air authorities or ecology will also be responsible for enforcing any requirements that apply to burning that is prohibited or exempt from permits in areas under their jurisdiction, unless another agency agrees to be responsible.

Permitting agencies and enforcing agencies may require that corrective action be taken, and may assess penalties to the extent allowed under their general and specific authorities if they discover noncompliance with this chapter. A fire protection authority called to respond to, control, or extinguish an illegal or out-of-control fire may charge, and recover from the person responsible for the fire, the costs of its response and control action.

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-070 (~~Open burning permit requirements.~~)
Variances. (~~(1) Permit program.~~ For areas where burning is allowed, the department, local air authorities, fire protection authorities, conservation districts, or counties may issue permits. Those issuing permits are responsible for field response to open burning complaints. Within ninety days of the effective date, the

~~department shall develop minimum standards for a field response program, which addresses training, staffing, funding, and any other elements deemed appropriate by the department.~~

~~(2) Permit program development and assistance.~~

~~(a) The department shall provide assistance for implementing a permitting program, including minimum standards which address training, staffing, funding, and any other elements deemed appropriate by the department.~~

~~(b) The department shall develop a model permit program and provide guidance on starting and implementing permit programs.~~

~~(c) In selecting a permit program, the options range from the minimum a general rule burn, as described in subsection (5) of this section to a written permit. A permit program must be in place eight months after the department issues guidelines. If at that time no agreement is reached, the area becomes a no burn area and falls under the restrictions of WAC 173-425-060(2). The department will conduct a joint public hearing with the conservation districts, local air authorities, counties, and fire districts. The purpose of the hearing is to inform the public that no agreement has been reached.~~

~~(d) The department or the local air authorities shall coordinate with the agencies listed in subsection (1) of this section to determine the type of permitting program appropriate for the area.~~

~~(3) Fees. The department or the local air authority may charge a fee to cover the administrative cost of a permit program. Fire districts, counties, and conservation districts issuing open burning permits may collect a fee to cover administrative costs. (RCW 70.94.780)~~

~~(4) Additional restrictions. The local air authorities and the department may restrict conditions for burning under this section. Burning conditions may include, but are not limited to, restricting burning in sensitive areas per chapter 173-440 WAC, restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions.~~

~~(5) General rule burn permits. For areas of the state where burning is allowed, agencies listed in subsection (1) of this section may use a general permit by rule. This section provides a minimum (general rule burn) permit. Persons not able to meet all of the requirements of (a) through (i) of this subsection must apply for and receive a written permit. General rule burn permits under this section may be used for the following number of days per year: 1992-1995 twenty one days/year; 1995-1998 fourteen days/year; 1998-2000 seven days/year; after 2000 seven days/year. Failure to comply with all the requirements of (a) through (i) of this subsection voids the general rule burn permit and the person burning is subject to the penalty provisions of WAC 173-425-100. A person burning under this section must follow these requirements and any~~

~~additional restrictions, including those established by cities, counties, or fire protection authorities:~~

~~(a) The fire must not include prohibited materials listed in WAC 173 425 040, except what paper is necessary to start the fire.~~

~~(b) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.~~

~~(c) No fires are to be within fifty feet of structures.~~

~~(d) The pile must not be larger than four feet by four feet by three feet.~~

~~(e) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.~~

~~(f) No outdoor fire is permitted in or within five hundred feet of forest slash without a written burning permit.~~

~~(g) Either the designated permitting authority must be called to confirm burning conditions for each day or current information on burning conditions must be obtained from another designated source.~~

~~(h) If the fire creates a nuisance, it must be extinguished.~~

~~(i) Permission from a landowner, or owner's designated representative, must be obtained before starting an open fire.))~~ Any person who proposes to engage in outdoor burning may apply to ecology or a local air authority for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants from the proposed burning. All variance applications must be reviewed, and approved or disapproved, in accordance with RCW 70.94.181. (RCW 70. 94.181)

AMENDATORY SECTION (Amending Order 91-57, filed 12/1/92, effective 1/1/93)

WAC 173-425-080 ((Violations.)) Severability. ~~((1) The local air authority or department may issue a notice of violation to the person responsible for the fire under any of the following:~~

~~(a) Conditions of a permit issued under this chapter are violated;~~

~~(b) Any open fire is ignited where, under this chapter, such fires are prohibited or where a permit is required and has not been obtained;~~

~~(c) Prohibited materials are burned in an open fire;~~

~~(d) Any open fire is ignited when a condition of impaired air quality or air pollution episode stage is declared;~~

~~(e) Any ignited open fire that is not extinguished when a condition of impaired air quality or air pollution episode is declared;~~

~~(f) The fire causes emissions detrimental to health;~~

~~(g) The fire causes emissions that unreasonably interfere with property use and enjoyment.~~

~~(2) A fire protection authority called to respond to, control, or extinguish an illegal or out of control fire may charge and recover from the person responsible for the fire the costs of its response and control action.))~~ The provisions of this regulation are severable. If any provision is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-425-090	Local air authority may issue variance.
WAC 173-425-100	Penalties.
WAC 173-425-110	Severability.